

Attention:

Comment 13589

Chief
Regulations and Procedures Division
Alcohol, Tobacco Tax and Trade Bureau
ATTN: notice no.41
Email: nprm@ttb.gov

ATTN: Notice no.41 – Labeling and Advertising of wines, Distilled Spirits and Malt Beverages; Request for Public Comment

I would like to make the following submission on behalf of the Winemakers' Federation of Australia. The Winemakers' Federation of Australia Incorporated (WFA) is the national peak body for the wine industry with voluntary membership representing more than 95% of the wine produced in Australia. The Winemakers' Federation of Australia (WFA) is recognized in Australian government legislation and in all other areas as the peak body for the Australian wine industry. As such, it develops policies and programs that are in the interests of the whole industry.

Making decisions on an 80% majority basis to ensure equitable representation of small and medium as well as large winemakers, WFA delivers a strong, unified voice on a range of political, social, environmental, trade and technical issues. WFA represents the industry's interests on national / international issues, on issues that may be local but have national implications, or on issues where a State Association has sought WFA's assistance.

The view of the Australian industry is that this proposed regulatory change has merit and will be beneficial to consumers. WFA believes that the vintage date requirement should be changed to 85% for all wines to ensure international consistency. However, the proposed amendment does not go far enough and has the potential to create a technical barrier to trade.

The petition proposes that;

'If labeled with a state, multi-state, county, or multi-county appellation of origin (or its foreign equivalent), at least 85% of the wine must have been derived from grapes harvested in the labeled calendar year. If labeled with a viticulture area appellation of origin (or its foreign equivalent), at least 95 percent of the wine must have been derived from grapes harvested in the labeled calendar year. and the wine must be labeled with an appellation of origin other than a country (which does not qualify for vintage labeling).'

The chief concern we have as an exporter to the United States is that this does not recognize the differences in the systems of viticulture area appellation that applies in the United States to that which applies in Australia.

Within Australia, there is a system whereby the country, (Australia), political sub-divisions (the States) and viticultural areas (zones, regions and subregions) are all protected as Geographic Indications. Geographic indications are broadly equivalent to viticulture areas and are registered after a process which determines the name and boundaries according to the quality and characteristics of the wine produced in that particular area.

We believe that the requirement should recognize this fundamental difference and permit imports of wine from registered Geographic Indications in Australia if 85% of the wine is derived from grapes harvested in the labeled calendar year. Otherwise the proposed requirement could breach WTO rules whereby wine from California is permitted to be made with 85% of the wine derived from grapes harvested in the labeled calendar year, but wine from south eastern Australia (an equivalent area) must be made according to 95%.

We further believe that the rule should permit country names to bear a vintage date at the 85% level if they are registered geographic indications in the country of origin.

The rationale for 85%

In Australia, the rationale for an 85% rule is that where a wine was to be improved by the addition of (say) an older component winemakers have found that it was necessary to add between 5 and 15% (usually 10-15%). This is the case with Sparkling Wines both in the old and new worlds (where the cuveé can be improved by the addition of some reserve wine). It is also the case with red wines in those GI's in Europe where experience has established that a 15% backblend of older wines is desirable.

The key arguments raised in Australia when it was decided to move from 100% to 85% were:

1. Are not in the consumer's interest
2. Are not perceived by consumers to be in their interest
3. Do not meet the consumer's expectation
4. Are too complex to be understood by the consumer and is therefore construed to be suspicious
5. Lower objectively determined wine quality

These were rejected because:

1) If generally this practice leads to better wine then it is in the consumer's interest.

2 to 4) The consumer's knowledge and perception of the present complex wine law does not have a bearing on his or her expectations. These expectations are created and reinforced rather by marketing and merchandising and not by an understanding of the wine law.

5) Wine quality was considered to be improved by this practice, which is generally accepted internationally.

Questions raised by TTB

In the request for comment, TTB raise a number of questions. I would like to respond with the position on these in Australia. WFA believes that in order to facilitate trade all wine trading countries should seek to harmonise their regulations or mutually accept other countries regulations when appropriate.

The first comment that TTB request is whether the proposed amendment will continue to have adequate information about the identity of wines that are labeled

with vintage dates, and are not misleading by the use of vintage dates on wine labels.

In answer to this question, it is clear that while there is no international recognised standard on vintage date, the OIV International Standard for the Labelling of Wines states:

3.1.5. Vintage or harvest year

This term is reserved for wines benefiting from a recognised geographic indication or a recognised appellation of origin. To bear this mention the wines must be made with grapes coming 100% from the year shown.

Nevertheless, with special dispensation, the producer States can lower this percentage to 85%, in the case where this practice is traditional and customary.

Internationally, 85% has been used as the benchmark for vintage labeling. The European Union, Australia, New Zealand all have an 85% rule for vintage. It would seem logical that to avoid consumer confusion that the one rule be adopted internationally. As 85% is the most widely used internationally accepted rule, it would be logical to adopt this. This will provide considerable advantages for United States producers as they will have more flexibility in production. Similarly, exporting countries to the US will not have to produce a specific blend for export to the United States which forms a potential technical barrier to trade.

The second question posed by the TTB would be on the perceived effect on consumers of using two vintage date standards rather than the current single standard approach?

Clearly, there is considerable consumer benefit for having a single standard for vintage. However, it is also clear that it would be better for consumers if there was a single international standard. Australia believes that there is significant potential benefit for both wine producers and for consumers if progress can be made towards the harmonization of wine labeling requirements.

In Australia for instance, wine can be labeled with a vintage date if it comprises of at least 85% of wine produced from grapes harvested in the indicated year (Australian Wine and Brandy Corporation, Regulation 22). This is consistent with the requirement of most major wine producing countries including those of the EU where a similar provision is codified in Article 18 of EU regulation 753/2002.

From an Australian perspective, any wine exported to the United States must comply with the 95% rule. Regulation 6AA of the *Australian Wine and Brandy Corporation Act 1980* requires exporters to meet the importing countries requirements when these are in conflict with the Australia standards. Therefore the 95% rule for vintage must be met. The Label Integrity Program is the part of the Act that gives effect to the enforcement of this program. This requirement was introduced with effect from the 1990 vintage and the legislation is covered by Part VIA, Sections 39A - 39ZL, of the Australian Wine and Brandy Corporation Act 1980.

The Label Integrity Program (LIP) has as its objective the advancement of the truthfulness and reputation for truthfulness of statements made on Australian wine labels, or made for commercial purposes in other ways, about the vintage, variety or geographical indication (region of origin) of all wines manufactured in Australia.

Fundamental concepts of LIP

- The program does not require a winemaker to make a label claim - that is, a claim as to the vintage, (grape) variety or geographical indication (region of origin of the grapes) of the wine.
- However, if a label claim is to be made, then an audit trail from finished product back to grape purchase must exist to substantiate any such claim.
- The program prescribes that certain events in the manufacture of wine be recorded.
- The program does not prescribe HOW records are to be kept. This gives winemakers complete flexibility to use a system best suited to their needs.

All wineries are then subject to regular audit to ensure compliance. Therefore, all Australian wine exported to the United States complies with the 95% vintage rule and is subject to regular audit to ensure this is the case.

In conclusion the Australian industry believes that the rule should be 'If labeled with a state, multi-state, county, or multi-county appellation of origin, or viticultural area (or its foreign equivalent), at least 85% of the wine must have been derived from grapes harvested in the labeled calendar year'. This is consistent with international practice and will be simple for consumers to understand. If there is a belief that maintaining a 95% rule will be a beneficial marketing tool, then State legislation can be enacted to do this and still enable the United States to meet its international obligations under the World Trade Organisation.

We are happy to provide any further comment on these issues if desired. I can be contacted on +61 2 6239 8300 or email tony@wfa.org.au.

Yours sincerely

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